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February 12, 2021

**Via E-Filing**

Honorable Valerie E. Caproni, U.S.D.J.  
 United States District Court  
 Thurgood Marshall United States Courthouse  
 Southern District of New York  
 40 Foley Square, Room 240  
 New York, NY 10007-1312

USDC SDNY  
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**MEMO ENDORSED**

**Re: *Cellucci et al. v. O'Leary et al. (S.D.N.Y. Civ. No. 1:19-cv-02752-VEC)***

Dear Judge Caproni:


My firm currently represents the plaintiffs in the above-captioned matter. As directed by the Court in its January 25, 2021 Order [121], we respectfully submit this joint letter on behalf of the plaintiffs and Defendants Stephen M. Fleming and Fleming PLLC (collectively referred to as the “Fleming Defendants”) and Defendants Evan J. Costaldo and Costaldo Law Group P.C. (collectively referred to as the “Costaldo Defendants”)<sup>1</sup> with respect to our “proposed next steps given the Court’s recent jurisdictional decision.” Specifically, this Court dismissed the above-referenced action against Defendants Dennis Michael O’Leary and DarkPulse Inc. (collectively referred to as the “DarkPulse Defendants”), *inter alia*, finding that the Court lacked subject-matter jurisdiction and failed to state a claim [120]. The Court ordered that we submit this joint letter “given that the Court lacks subject-matter jurisdiction over this action, the Court likely does not have subject-matter jurisdiction to consider and eventually approve the proposed settlements pursuant to Fed. R. Civ. P. 23.1(c).” [121]

Plaintiffs and the Attorney Defendants acknowledge the Court’s ruling that it lacks subject-matter jurisdiction over this action. In light of this ruling, it is the Plaintiffs’ and the Attorney Defendants’ understanding that the Federal Rules of Civil Procedure, in particular, FED. R. CIV. P. 23.1 requiring Court approval of settlements of derivative claims would not apply to the settlements entered into between Plaintiffs and the Attorney Defendants. As Plaintiffs previously filed Stipulations of Dismissal with Prejudice as to the Attorney Defendants, the Parties consider this matter fully resolved.

<sup>1</sup> . The Fleming Defendants and the Costaldo Defendants are collectively referred to as the “Attorney Defendants.” Plaintiffs and the Attorney Defendants are sometimes collectively referred to herein as the “Parties.”

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The Parties thank Your Honor for your time and consideration of this matter.

Respectfully submitted,  
  
BENNET SUSSE

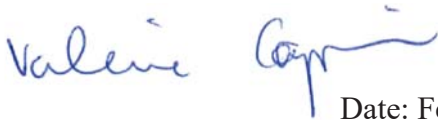
cc: All counsel of record (via e-filing)

Because the Court lacks subject-matter jurisdiction over this matter, any settlement reached by the parties pertains only to the private Plaintiffs and the Defendants. The settlement does not pertain to any derivative claims.

The claims against these Defendants are hereby dismissed with prejudice.

The Clerk of Court is respectfully directed to terminate all open motions and close this case.

SO ORDERED.



Date: February 12, 2021

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE